

1. PURCHASE ORDER STANDARD TERMS AND CONDITIONS

- (a) Acceptance by the Supplier of the Purchase Order constitutes a contract comprised of the Purchase Order, these terms and conditions and any other document that is attached to the Purchase Order when given to the Supplier (**Contract**). For the avoidance of doubt, if the Supplier provides terms and conditions (including as printed on a quotation, consignment note, correspondence or other document) with or in connection with the Goods and/or Services described in the Purchase Order, then the Supplier's terms and conditions will be of no legal effect and will not constitute part of the terms and conditions applicable to the supply of the Goods and/or the performance of the Services (even if any representative of Empire signs the Supplier's terms and conditions).
- (b) In the event of inconsistency, the order of precedence of documents comprising the Contract is:
- the Purchase Order;
 - a document entitled "Special Conditions" referred to in the Purchase Order (if any);
 - these terms and conditions; and
 - any other documents attached to the Purchase Order when given to the Supplier in the order in which they are attached to the Purchase Order.

2. SUPPLY OF GOODS AND/OR PERFORMANCE OF SERVICES

- (a) Empire agrees to purchase the Goods and/or accept the supply of the Services, and the Supplier agrees to supply and deliver the Goods to, and/or perform the Services at, the Site, by the Delivery Date for the amount specified in the Purchase Order (**Price**) in accordance with the Contract.
- (b) The Supplier must supply and maintain, at its cost, everything the Supplier requires in order to supply the Goods and/or provide the Services in accordance with the Contract, including, but not limited to, all personnel, goods, tools, equipment, materials, authorisations and insurance in accordance with clause 14.
- (c) If the Supplier experiences any delay in providing the Goods and/or Services in accordance with the Contract, the Supplier must immediately notify Empire in writing of such delay, the reason for the delay, and its expected duration. Such notification will not constitute a waiver by Empire of the Suppliers delivery obligations under the Contract.

3. REJECTION OF GOODS OR SERVICES

- (a) If the Goods or Services do not comply with the requirements of the Contract, or are otherwise defective, and are rejected by Empire during the term of the Contract or during the Warranty Period, the Supplier must at the Supplier's expense, at or by the time and to the extent is notified by Empire:
- repair the Goods or re-perform or make good the defective Services; or
 - remove the Goods from the Site and deliver replacement Goods to the Site; or
 - un-install the Goods, remove them from the Site, make good any damage to the Site and deliver replacement Goods to the Site,
- or, if Empire so requires, instead of delivering replacement Goods or re-performing the Services refund all money paid by Empire in respect of the defective Goods or Services. Empire has the same rights in respect of replacement or repaired Goods and re-performed Services, as it had in respect of the Goods and Services which were originally supplied.
- (b) If the Supplier fails to do any of the things notified by Empire under this clause within 7 days, Empire may do those things or have them done by a third party at the expense of the Supplier.
- (c) This clause 3 survives completion or termination of the Contract.

4. PRESERVATION OF RIGHTS

Neither the rejection of, or the failure of Empire to in any way reject, the Goods and/or the Services, nor the acceptance of the Goods under clause 6, nor the making of any payment, will prejudice any rights Empire may have against the Supplier arising in any way in relation to failure by the Supplier to provide the Goods and/or Services in accordance with the Contract or otherwise affect the Supplier's warranties, liabilities or obligations under the Contract or at law.

5. WARRANTIES

- (a) Each of the warranties given by the Supplier commences on the date of delivery of the Goods to the Site and ends 24 calendar months after that date or, in the case of Services, commences on the date on which performance of the Services is completed to the satisfaction of Empire and ends 12 calendar month after that date (**Warranty Period**).
- (b) The Supplier warrants that the Goods will:
- be of merchantable quality and free from defects;
 - be new, as at the date of delivery (unless otherwise specified in the Contract);
 - comply with the requirements of the Contract relating to those Goods (including any specifications forming part of the Contract (**Specifications**));
 - conform with any sample provided;
 - be fit for the specific purpose for which those Goods are intended to be used, as specified in the Specifications, or if no purpose is specified, for the purpose for which those Goods would ordinarily be used;

- comply with any law and relevant standard of Standards of Australia Limited applicable to those Goods and any other standards specified in a document forming part of the Contract;
 - not infringe the intellectual property rights of any person; and
 - be free from any Security Interests, that the Supplier has complete ownership of the Goods and that Empire will be entitled to clear, complete and quiet possession of the Goods.
- (c) The Supplier warrants that the Services will be performed:
- in a skilful and competent fashion by appropriately qualified and trained personnel;
 - with all due care and diligence;
 - in a cost effective and timely manner;
 - in accordance with the requirements of the Contract, including any specifications for the performance of the Services forming part of the Contract;
 - in accordance with all applicable laws and standards in the Supplier's industry (including relevant standards of Standards Australia Limited, the American Petroleum Institute and any other standards specified in a document forming part of the Contract); and
 - without undue interference with the activities of any other person on the Site.
- (d) The Supplier must pass on the benefit of any manufacturer's warranties applicable to the Goods. If required by Empire, the Supplier must sign such documents as Empire reasonably requires, in order to secure for Empire the benefit of those warranties.
- (e) This clause 5 survives termination or expiry of the Contract.

6. DELIVERY AND RISK AND TITLE

- (a) The Supplier must deliver the Goods to the Site by the Delivery Date and must ensure that the Goods are suitably packed to avoid damage in transit or in storage, clearly marked for delivery and that a packing list which itemises the Goods is included in each package of Goods for delivery.
- (b) Empire will provide the Supplier access to the Site as required to perform its obligations under this Contract.
- (c) Title in the Goods passes to Empire upon payment of the Price and risk in the Goods passes to Empire when the Goods are delivered to the Site.
- (d) All Goods will be accepted by Empire subject to inspection by Empire within a reasonable time after delivery and Empire being satisfied with the Goods. Payment for Goods prior to such inspection does not constitute acceptance of them.
- (e) The Supplier must commence performance of the Services on the date specified by Empire in the Purchase Order and in any event within 14 days from the date of issue of the Purchase Order unless otherwise agreed with Empire (**Commencement Date**), and must complete the performance of the Services by no later than the Delivery Date (or if no date is specified, as soon as reasonably practicable after the Commencement Date), and in accordance with any programme for the provision of the Services comprised in the Contract or as otherwise provided in the Contract.

7. PROGRAMMES

- (a) If requested, and at the time requested, by Empire, the Supplier must provide Empire with a detailed programme for the performance of the Services, which, once approved by Empire, will be taken to be a programme comprised in the Contract.
- (b) The Supplier must provide Empire with a progress update and performance report in relation to the performance of the Services at the intervals directed by Empire and in a form approved by Empire.

8. MATERIALS AND EQUIPMENT

Where Empire provides its own materials or equipment to the Supplier for use in connection with the Contract:

- the materials and equipment will be and will remain the property of Empire;
 - the Supplier must keep the materials and equipment free from any Security Interests;
 - the Supplier must maintain all the materials and equipment in good working order and condition (subject to fair wear and tear);
 - the Supplier may only use the materials and equipment solely in connection with the Contract and must return them to Empire immediately on termination or expiry of the Contract or when they are no longer required for the Services (whichever is earlier); and
 - any damage to the materials or equipment will be made good at the Supplier's expense.
- ## 9. INVOICING AND PAYMENT
- (a) Upon delivery of the Goods and/or completion of the Services, the Supplier must provide to Empire a valid tax invoice (**Invoice**) for the Price, which must include (as a minimum):
- a reference to the Purchase Order; and
 - a detailed description of the Goods delivered and/or Services performed, including the Delivery Date, Site and quantity of Goods delivered and Services performed, the Price of the Goods and/or Services and the amount of any applicable GST.

- (b) Empire will pay all Invoices by no later than the end of the calendar month after the month in which the invoice was received by Empire or if the invoice is received by the 5th day of a month it will be paid by Empire by the end of that month, except, in any case:
- (i) where Empire disputes the Invoice, in which case Empire may withhold payment of the amount in dispute pending resolution of the dispute in accordance with clause 17; and
 - (ii) that Empire may reduce and withhold any payment due to the Supplier by any amount which the Supplier must pay Empire, including costs, charges, damages and expenses and any debts owed by the Supplier to Empire on any account whatsoever. This does not limit Empire's right to recover those amounts in other ways.

10. ASSIGNMENT AND SUBCONTRACTING

The Supplier must not, without prior written consent from Empire assign any or all of the Supplier's rights or obligations under the Contract or subcontract all or part of the supply of Goods and/or performance of Services.

11. INDEMNITY

- (a) The Supplier indemnifies Empire, from and against any losses, liability, costs, damages and expenses arising, in relation to all rights and obligations under this Contract, in connection with:
- (i) the loss of, or any damage to, any property of any person (including any property on the Site);
 - (ii) the death of, or injury to any person; and
 - (iii) the breach of the intellectual property rights of any third person, caused or contributed to by the Supplier, its subcontractors, employees or agents.
- (b) Subject to the other provisions of this clause 11 and to the full extent permitted by law, the Supplier shall release, indemnify, defend and hold harmless Empire from and against any losses, liability, costs, damages and expenses whatsoever in connection with:
- (i) the breach of any of the Supplier's obligations, warranties or representations under the Contract; or
 - (ii) the misconduct or negligent act or omission of the Supplier or its subcontractors, employees, officers, agents or invitees, in the provision of the Goods or the performance of the Services.
- (c) The indemnities contained in this clause continue to apply to any act or omission by the Supplier, its subcontractors, employees or agents, regardless of the expiry of a Warranty Period or the Contract.

12. TERMINATION

- (a) Without prejudice to rights and obligations arising prior to termination, Empire may terminate the Contract at any time and for any reason by written notice to the Supplier (with such termination to take effect at the time specified in the notice).
- (b) Subject to Empire being reasonably satisfied that the Supplier has complied with its obligations under the Contract, Empire will pay the Supplier what is properly due and payable to it for the Goods delivered and/or Services performed prior to the date of termination specified in accordance with clause 12(a).
- (c) The Supplier may terminate the Contract with 14 days prior written notice to Empire, if Empire fails to make a payment due in accordance with clause 9(b) for 3 consecutive calendar months.

13. TAXES

- (a) If GST is imposed on any supply made by the Supplier under or in connection with the Contract, the Supplier may (subject to the provision of the Invoice) recover from Empire, in addition to the Price, an amount equal to the GST payable in respect of that supply.
- (b) The Supplier shall be solely responsible for all other taxes or levies imposed on the Supplier under law in connection with or arise out of the Contract.

14. INSURANCE

- (a) The Supplier must effect and maintain (and where possible have Empire's interest noted on) policies of insurance covering such of public and product liability, motor vehicles, professional indemnity, workers compensation insurance for the Supplier's full liability under all applicable laws relating to workers compensation, property loss or damage in respect of the Supplier's plant and equipment used to manufacture the Goods or provide the Services, and for such sums insured, as a prudent supplier of goods or services of a similar kind would usually effect and maintain.
- (b) If the Supplier fails to effect or maintain any insurances required by this clause 14, then Empire may:
- (i) effect and maintain those insurances;
 - (ii) pay the necessary premiums; and
 - (iii) recover from the Supplier any amounts paid under this clause 14(b), until the Supplier has complied with its obligations under clause 14.

15. CONFIDENTIALITY

- (a) The Supplier must keep confidential:
- (i) any information or details relating to the Contract or Empire's business affairs and operations; and
 - (ii) any other information designated by Empire as confidential or received by the Supplier in circumstances implying an obligation of confidentiality,

as long as such matters remain out of the public domain, other than by a breach of the Contract or by breach of an obligation of confidentiality imposed otherwise than by the Contract.

- (b) This clause 15 does not apply to the disclosure of information to comply with any law or the requirements of any government agency or stock exchange, provided that prior to such disclosure the disclosing party gives notice to the other party with full particulars of the proposed disclosure.
- (c) This clause 15 shall survive termination or expiry of the Contract.

16. AGENCY

If the Purchaser Order specifies that Empire issues it as manager or agent of a joint venture which is named on the Purchase Order the participants in that joint venture, and not Empire, except as such a participant, are liable to the Supplier under the Contract severally (and not jointly or jointly and severally) and in proportion to their respect interests in that joint venture from time to time and they share the benefits of Empire under the Contract as tenants in common in proportion to those interests.

17. DISPUTES

- (a) If a dispute arises in connection with this Contract, a party must give to the other party a dispute notice specifying the dispute and requiring its resolution under this clause 17.
- (b) If the dispute is not resolved within 7 days after the notice of dispute is given to the other party (**Notice Period**), the dispute is by this clause submitted to mediation. The mediation must be conducted in Perth. The Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes as amended by this clause apply to the mediation, except where they conflict with this clause.
- (c) If the parties have not agreed upon the mediator and the mediator's remuneration within 7 days after the Notice Period:
- (i) the mediator is the person appointed by; and
 - (ii) the remuneration of the mediator is the amount or rate determined by, the President of the Western Australian Law Society or the President's nominee, acting on the request of either party to the dispute.
- (d) If the dispute is not resolved within 28 days after the appointment of the mediator, any party may then, but not earlier, commence proceedings in any court of competent jurisdiction.
- (e) This clause 17 does not prevent either party from obtaining any injunctive, declaratory or other interlocutory relief from a court, which may be urgently required.

18. MISCELLANEOUS

18.1 Collusion or Improper Conduct

The Supplier warrants that it has not offered to, nor received from, any other person, any payment or incentive (whether financial or otherwise) in connection with the Contract, the obligations to be performed under the Contract or any procurement process which may have led to or preceded the Contract. This clause 18.1 survives termination or expiry of the Contract.

18.2 Variation of Contract

The Contract may be varied only by a further written document signed by or on behalf of each party.

18.3 Relationship

The parties are independent contracting parties with the rights, obligations and liabilities specified in the Contract. Nothing in the Contract will be construed as establishing any partnership, joint venture, employment or other relationship between the parties.

18.4 Entire agreement

The Contract (including any documents provided under clause 1 of this Contract) constitutes the entire agreement between the parties and supersedes all prior representations and agreements in connection with its subject matter.

18.5 Costs

Each party will bear its own legal and other costs and expenses incurred in connection with the negotiation, preparation and execution of the Contract.

18.6 Governing Law

The laws of Western Australia apply to the Contract and the Courts of that State have non-exclusive jurisdiction to determine any proceedings in relation to the Contract.

18.7 Definitions

In this Contract:

Commencement Date has the meaning given in clause 6(e).

Delivery Date means the delivery and/ or service completion date specified in the Purchase Order, or in accordance with any programme in accordance with clause 7, for the delivery of the Goods and/or Services.

Empire means:

- (a) Empire Oil & Gas NL ACN 063 613 730;
- (b) Empire Oil Company (WA) Limited ACN 009 475 423; or
- (c) any Related Body Corporate (as defined in the *Corporations Act 2001 (Cth)*).

Goods means the goods supplied by the Supplier and described in the Purchase Order.

Notice Period has the meaning given in clause 17(b).

Purchase Order means the order placed by Empire with the Supplier that incorporates these terms and conditions by reference.

Security Interest means any lien, mortgage, encumbrance, charge, security interest within the meaning of the *Personal Property Securities Act 2009 (Cth)* or other third party right or claim.

Supplier means the entity to which the Purchase Order is issued and is named as Supplier on the Purchase Order.